

AMENDED IN ASSEMBLY APRIL 10, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 3101

Introduced by Assembly Member Isenberg
(Principal coauthor: Assembly Member Knowles)
(Principal coauthors: Senators Killea and Kopp)
(Coauthors: Assembly Members Davis, Ducheny,
Goldsmith, and Morrow)

February 23, 1996

An act to amend Section 5913 of, ~~and~~ to add a heading of Article 1 (commencing with Section 5910) to, and to add Article 2 (commencing with Section 5914) to, Chapter 9 of Part 2 of Division 2 of *Title 1 of*, the Corporations Code, relating to public benefit corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 3101, as amended, Isenberg. Public benefit corporations: health facilities: sale of assets.

Existing law provides that a public benefit corporation may sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its assets when the principal terms are approved by the board of directors and the members of the corporation and by any other person whose approval is required by the articles, except as specified. Existing law requires a public benefit corporation to give written notice to the Attorney General 20 days before it sells, leases, conveys, exchanges, transfers, or otherwise disposes of all or substantially all of its assets, except as specified.

This bill would subject a public benefit corporation that is a health facility or provides health care of any kind to additional requirements prior to the corporation entering into any agreement or transaction to sell, transfer, lease, exchange, option, convey, or otherwise dispose of a material amount of its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity.

The bill would require the corporation to notify the Attorney General ~~who in turn would be required to notify the State Director of Health Services. The bill would require the State Director of Health Services, in consultation with the Director of Statewide Health Planning and Development, to review the proposed agreement or transaction and make a written finding on whether it would create a significant effect on the availability or accessibility of health care services to the affected community.~~

~~The~~ The bill would require the Attorney General to conduct a public hearing and to consent or not consent to the agreement or transaction. The bill would authorize the Attorney General to adopt regulations, *to contract with, consult, and receive advice from any state agency,* and to contract with experts or consultants.

The bill would require the public benefit corporation to reimburse the state agencies for their costs in complying with its provisions, upon request of the ~~state agencies~~ *Attorney General.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of
- 2 the following:
- 3 (a) Charitable, nonprofit health facilities, including
- 4 nonprofit hospitals, hold all of their assets in trust, and
- 5 those assets are irrevocably dedicated, as a condition of
- 6 their tax-exempt status, to the specific charitable
- 7 purposes set forth in the articles of incorporation of
- 8 nonprofit entities.



1 (b) The public is the beneficiary of the trust on which
2 charitable, nonprofit health facilities hold their assets.

3 (c) Charitable, nonprofit health facilities have a
4 substantial and beneficial effect on the provision of health
5 care to the people of California, providing as part of their
6 charitable mission uncompensated care to uninsured
7 low-income families and under-compensated care to the
8 poor, elderly, and disabled.

9 (d) Transfers of the assets of nonprofit, charitable
10 health facilities to the for-profit sector, such as by sale,
11 joint venture, or other sharing of assets, directly affect the
12 charitable use of those assets and may affect the
13 availability of community health care services.

14 (e) The state Attorney General is entrusted by law to
15 bring actions on behalf of the public in the event of a
16 breach of the charitable trust of a nonprofit entity and to
17 represent the public in the sale or other transfer of the
18 assets of a nonprofit entity.

19 (f) It is in the best interests of the public to ensure that
20 the public interest is fully protected whenever the assets
21 of a charitable nonprofit health facility are transferred
22 out of the charitable trust and to a for-profit or mutual
23 benefit entity.

24 (g) The consent of the state Attorney General shall be
25 required for any transaction involving a nonprofit,
26 charitable health facility when a material amount of the
27 charitable assets are transferred to a for-profit or mutual
28 benefit entity.

29 SEC. 2. A heading of Article 1 (commencing with
30 Section 5910) is added to Chapter 9 of Part 2 of Division
31 2 of *Title 1* of the Corporations Code, to read:

32
33 Article 1. General Provisions
34

35 SEC. 3. Section 5913 of the Corporations Code is
36 amended to read:

37 5913. Except for a corporation subject to Section 5914,
38 a corporation must give written notice to the Attorney
39 General 20 days before it sells, leases, conveys, exchanges,
40 transfers or otherwise disposes of all or substantially all of

1 its assets unless the transaction is in the usual and regular
2 course of its activities or unless the Attorney General has
3 given the corporation a written waiver of this section as
4 to the proposed transaction.

5 SEC. 4. Article 2 (commencing with Section 5914) is
6 added to Chapter 9 of Part 2 of Division 2 of the
7 Corporations Code, to read:

8
9 Article 2. Health Facilities

10
11 5914. (a) Any public benefit corporation that is a
12 health facility, as defined in Section 1250 of the Health
13 and Safety Code, or is a facility that provides health care
14 of any kind, shall be required to provide written notice to,
15 and to obtain the written consent of, the Attorney
16 General prior to entering into any agreement or
17 transaction to do either of the following:

18 (1) Sell, transfer, lease, exchange, option, convey, or
19 otherwise dispose of, its assets to a for-profit corporation
20 or entity or to a mutual benefit corporation or entity
21 when a material amount of the assets of the public benefit
22 corporation are involved in the agreement or transaction.

23 (2) Transfer control, responsibility, or governance of
24 a material amount of the assets or operations of the
25 nonprofit public benefit corporation to any for-profit
26 corporation or entity or to any mutual benefit corporation
27 or entity.

28 (b) The notice to the Attorney General provided for
29 in this section shall include and contain the information
30 the Attorney General determines is required.

31 ~~5915. Upon receipt of the notice required by Section~~
32 ~~5914, the Attorney General promptly shall notify the State~~
33 ~~Director of Health Services and, upon request, shall~~
34 ~~provide to the director any information pertinent to the~~
35 ~~director's inquiry received from the nonprofit public~~
36 ~~benefit corporation. To assist the Attorney General in~~
37 ~~determining whether to consent to a request made under~~
38 ~~Section 5914, the State Director of Health Services, in~~
39 ~~consultation with the Director of Statewide Health~~
40 ~~Planning and Development, shall review and make a~~

~~written finding within 60 days of receipt of the notice from the Attorney General on whether the proposed sale, transfer, lease, exchange, option, conveyance, or disposition, or change in control, responsibility, or governance, may create a significant effect on the availability or accessibility of health care services to the affected community and any other findings as the State Director of Health Services deems pertinent. The State Director of Health Services shall obtain public input regarding the medical and health care effects of the proposed transaction on the affected community. The State Director of Health Services, upon completion of the review, may request reimbursement from the nonprofit public benefit corporation of all actual and reasonable costs incurred in conducting the review, including administrative costs. The nonprofit public benefit corporation, upon request, shall pay the State Director of Health Services promptly for the costs.~~

~~5916.—~~

5915. Within 90 days of the receipt of the written notice required by Section 5914, the Attorney General shall notify the public benefit corporation of the decision to consent or not consent to the agreement or transaction. The Attorney General may extend this period for one additional 60-day period.

~~5917.—~~

5916. Prior to issuing any written decision referred to in Section ~~5916~~ 5915, the Attorney General shall conduct one or more public hearings to hear comments from interested parties. At least 14 days before conducting the public hearing, the Attorney General shall provide written notice of the time and place of the hearing through publication in one or more newspapers of general circulation in the affected community.

~~5918.—~~

5917. The Attorney General shall have discretion to consent or not consent to any such agreement or transaction. The Attorney General may make his or her consent subject to any terms or conditions the Attorney General deems appropriate. In making the

1 determination, the Attorney General may consider any
2 factors that the Attorney General deems relevant,
3 including, but not limited to, whether any of the following
4 apply:

5 (a) The terms and conditions of the agreement or
6 transaction are fair and reasonable to the nonprofit public
7 benefit corporation.

8 (b) The agreement or transaction will result in
9 inurement to any private person or entity.

10 (c) Any agreement or transaction that is subject to this
11 article shall be at fair market value. In this regard, “fair
12 market value” means the most likely price that the assets
13 being sold would bring in a competitive and open market
14 under all conditions requisite to a fair sale, the buyer and
15 seller, each acting prudently, knowledgeably and in their
16 own best interest, and a reasonable time being allowed
17 for exposure in the open market.

18 (d) The market value has been manipulated by the
19 actions of the parties in a manner that causes the value of
20 the assets to decrease.

21 (e) The proposed use of the proceeds from the
22 agreement or transaction is consistent with the charitable
23 trust on which the assets are held.

24 (f) The agreement or transaction involves or
25 constitutes any breach of trust.

26 (g) The Attorney General has been provided,
27 pursuant to Section 5250, with sufficient information and
28 data by the nonprofit public benefit corporation to
29 evaluate adequately the agreement or transaction or the
30 effects thereof on the public.

31 ~~(h) The State Director of Health Services, pursuant to~~
32 ~~Section 5915, determines that the agreement or~~

33 ~~(h) The agreement or transaction may create a~~
34 ~~significant effect on the availability or accessibility of~~
35 ~~health care services to the affected community. The~~
36 ~~failure of the director to make a determination may give~~
37 ~~the Attorney General cause not to consent to the~~
38 ~~proposed agreement or transaction. affected community.~~

39 (i) The proposed agreement or transaction is in the
40 public interest.

~~5919.—~~

5918. The Attorney General may adopt regulations implementing this article.

~~5920. (a) The Attorney General, in his or her sole discretion, may contract with experts or consultants to assist in reviewing the proposed agreement or transaction.~~

5919. (a) *Within the time periods designated in Section 5915 and relating to those factors specified in Section 5917, the Attorney General may do the following:*

(1) *Contract with, consult, and receive advice from any state agency on those terms and conditions that the Attorney General deems appropriate.*

(2) *In his or her sole discretion, contract with experts or consultants to assist in reviewing the proposed agreement or transaction.*

(b) Contract costs shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation. Any contract entered into under this subdivision section shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The nonprofit public benefit corporation, upon request, shall pay the Attorney General promptly for all contract costs.

~~(b)–~~

(c) The Attorney General shall be entitled to reimbursement from the nonprofit public benefit corporation for all actual, reasonable costs incurred in reviewing, evaluating, and making the determination referred to in this article, including administrative costs. The nonprofit public benefit corporation shall promptly pay the Attorney General, upon request, for all such costs.